

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARTELL FLIPPINS,
#M54010,

Plaintiff,

v.

Case No. 19-cv-00517-NJR

KEVIN KINK,
WEXFORD HEALTH SOURCES, INC.,
DR. VIPIN SHAH,
FAIYAZ AHMED,
DR. STEPHEN RITZ,
SARA STOVER,
LORIE CUNNINGHAM,
JOHN BALDWIN,
SHERRY BENTON, and
ROB JEFFREYS,

Defendants.

ORDER DISMISSING CASE

ROSENSTENGEL, Chief Judge:

Plaintiff Martell Flippins commenced this action pursuant to 28 U.S.C. § 1983 while an inmate of the Illinois Department of Corrections. On October 11, 2019, Defendants Baldwin, Jeffreys, Cunningham, Benton, and Kink filed a motion for summary judgment arguing that Plaintiff Martell Flippins failed to exhaust his administrative remedies prior to filing suit, as required by the Prison Litigation Reform Act. (Doc. 82). The motion was accompanied by a notice to Flippins that explained the consequences for failing to respond to a motion for summary judgment. (Doc. 83). Flippins did not respond to the motion. He also failed to respond to an Order to Show Cause why the Court should not

construe his silence as an admission of the merits of the motion and grant summary judgment to Defendants. (Doc. 93).

On July 21, 2020, the Court entered a second Show Cause—this time requiring Flippins to demonstrate why the Court should not consider his failure to respond to Defendants’ motion for summary judgment and the Court’s previous Show Cause Order as an abandonment of this lawsuit. (Doc. 94). He was warned that failure to respond to the Show Cause Order would result in dismissal of this action for want of prosecution and/or for failure to comply with a court order. Flippins’s response was due by August 5, 2020. The deadline has passed, and Flippins has not responded to the Show Cause Order at Document 94. In fact, the Court has not heard from Flippins since February 17, 2020, (*See* Doc. 90), and the Court will not allow this matter to linger indefinitely.

For these reasons, this action is **DISMISSED with prejudice**, based on Flippins’s failure to comply with orders of the Court and for failure to prosecute his claims. *See* FED. R. CIV. P. 41(b); *Lucien v. Brewer*, 9 F.3d 26, 28-29 (7th Cir. 1993) (stating dismissal is a “feeble sanction” if it is without prejudice; “Rule 41(b) states the general principle that failure to prosecute a case should be punished by dismissal of the case with prejudice.”). The pending Motion for Summary judgment (Doc. 82) is **DENIED** as **MOOT**.

Flippins is **ADVISED** that his obligation to pay the filing fee for this action was incurred at the time the action was filed. Therefore, the filing fee of \$350.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

If Flippins wishes to appeal this Order, he must file a notice of appeal with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). If he does

choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien*, 133 F.3d at 467. He must list each of the issues he intends to appeal in the notice of appeal and his motion for leave to appeal *in forma pauperis*. *See* FED. R. APP. P. 24(a)(1)(C). Moreover, if the appeal is found to be nonmeritorious, Flippins may also incur a “strike.” A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of judgment, and this 28-day deadline cannot be extended.

The Clerk of Court is **DIRECTED** to close this case and enter judgment accordingly.

IT IS SO ORDERED.

DATED: August 6, 2020

The image shows a handwritten signature in black ink that reads "Nancy J. Rosenstengel". The signature is written in a cursive style. Behind the signature, there is a faint, circular official seal of the United States District Court for the District of Columbia.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge